IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9343 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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SADDIQ MOHMAD PITTAL

Versus

STATE OF GUJARAT

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Appearance:

MR MUKESH R SHAH for Petitioner

Mr. P.S.Shukla, AGP for Respondent No. 1, 2, 3

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CORAM : MR.JUSTICE J.R.VORA

Date of decision: 21/12/2000

ORAL JUDGEMENT

#. The petitioner by way of this petition under Article 226 of the Constitution of India has challenged his order of detention passed by the District Magistrate, Panchmahals on 6.7.2000 in exercise of the powers conferred upon him vide section 3(1) of the Gujarat

Prevention of Anti social Activities Act 1985( PASA Act for short). The petitioner came to be detained from 16.8.2000 in pursuance of the above said order. The detaining authority took into consideration the fact that in all 6 offences were registered against the petitioner from 18.1.1989 to 3.11.1999 under sections 379,395, 47 I.P.C. etc., of the Indian Penal Code. The allegations against the petitioner was that the petitioner was indulging in committing the offence of theft especially in committing the theft of electric wires. The detaining authority placed reliance on the investigation in the above said crime and the complaint filed. The detaining authority also took into consideration statements of 4 witnesses who offered their statements on assurance of identity to the ex tent that the petitioner was indulging in activity of theft and he was a habitual offender. It was also stated by the witnesses that the petitioner was a hardened criminal and was a head strong person. Placing reliance upon the above material, the detaining authority came to the conclusion that the petitioner was involved in the activity of committing theft and was a dangerous person within the meaning of section 2(c) of the PASA Act.

#. Learned advocate Mr. R.S.Sanjanwala for Mr. M.R.Shah on behalf of the petitioner and Mr.P.S.Shukla learned AGP on behalf of the respondents were heard.

#. Amongst various grounds urged against the order of detention it was vehemently urged that the order of detention is vitiated because there was delay in passing the order of detention. It was urged that said crime against the petitioner came to be registered on 3.11.1999. Thereafter from 19.2.2000 to 22.2.2000 statements of 4 witnesses were recorded and the order came to be passed on 6.7.2000, nearly about five months after recording of the statements of the witnesses. It was urged therefore, that the order is required to be quashed and set aside.

#. From the rival contention it clearly appears that the case of the petitioner is squarely covered by the ratio of the decision of this Court in Elesh Nandubhai Patel vs. Commissioner of Police, Ahmedabad City reported in 1997(1) GLH 381 . After relying upon a decision in Pradeep Nilkanth Paturkar vs. S. Ramamurthi as reported in AIR 1994 SC 656 this court ruled that unexplained delay in passing the order of detention vitiates the detention of the detenu. The order of detention came to be quashed in the above said two cases on the sole ground that after registration of the crime against the

petitioner, the order came to be passed after delay.

#. In this case also it is obvious that the last crime against the petitioner relied upon by the detaining authority came to be registered on 3.11.1999. Thereafter from 19.2.2000 to 22.2.2000, statements of 4 witnesses came to be registered and after nearly about 5 months on 6.7.2000 the order of detention came to be passed by the detaining authority. It clearly appears that the detaining authority took into consideration stale material to reach subjective satisfaction about the passing of the order of detention. Therefore, the order of detention for the above said reasons is required to be quashed.

#. In the result the order of detention passed against the petitioner by the District Magistrate, Panchmahals, Godhra on 6.7.2000 under the PASA Act is hereby quashed and set aside. The petitioner Sidiq Mohmad Pittal is hereby ordered to be set at liberty forthwith if he is not required to be detained for any other purpose. Rule made absolute. Direct service permitted.

(J.R.Vora.J)

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